

THE DAILY CLARION.

DECISIONS OF THE HIGH COURT OF ERRORS AND APPEALS.

OCTOBER TERM, 1866.

Robert K. Evans, by his Guardian,
vs.
E. S. Fisher, Executor.
Chief Justice Handy delivered the Opinion of the Court.

(CONTINUED.)

Paine vs. Pendleton, 38 Miss., 380, also held on, was a petition of like nature; it appeared, from the proceedings in relation to the administration; that there were assets in the hands of the Administrator largely exceeding the amount of the debt brought against the estate, which had not been administered or accounted for by the Administrator. It was held, that that was a good ground for refusing to decree a sale of the lands; and if the assets were wanted by the Administrator, the creditor's remedy would be against the Administrator and assets on his bond, and that the debt would be no good ground for ordering a sale of the lands. In the case of the Administrator, the creditor's remedy would be against the Administrator and assets on his bond, and that the debt would be no good ground for ordering a sale of the lands. In the case of the Administrator, the creditor's remedy would be against the Administrator and assets on his bond, and that the debt would be no good ground for ordering a sale of the lands.

The extent to which these cases go, is that the lands will not be decreed to be sold in the first instance when the insufficiency of the personal assets has been ascertained by the neglect of duty or the devastativeness of the Administrator. They do not touch the question, here presented, of an insufficiency produced by causes for which the Executor was not liable, and on account of which the creditors were without remedy; for we assume that there was no liability on his part, since it is conceded by both parties.

It is plain that, in this case, here presented, there was no recourse of the creditors against the Executor, and that no remedy was left them but the sale of the real estate for the payment of their debts. It is not pretended that the loss of the personal assets was in any wise attributable to the fault or laches of the creditors; and hence, all the rights which the law gave them, against the estate of the testator, were retained in full force.

The case presented, then, is simply one where the creditor's had two funds chargeable with the payment of their debts; primarily, the personal assets; and on the second, the real estate, of the testator. The former has been lost without any fault on the part of the creditors, leaving their debts unsatisfied, and the simple question is whether the fund secondarily liable should not be appropriated to the payment of the debts.

It is said that the case is analogous to that of a levy on personal property sufficient to satisfy an execution at law, where, after the property is taken out of the defendant's possession by the Sheriff, it is sold under a writ of fieri facias, in which case the execution would be satisfied as to the defendant. But this is entirely inapplicable to the case at hand, and the result is that the property is taken out of the defendant's possession, and the result is that the property is taken out of the defendant's possession, and the result is that the property is taken out of the defendant's possession.

It is also said that the principle of the case of a person having a large estate, and indebted to an insolvent estate, or to a person who has property, who may be made a creditor of a small part of his property to aid or children, leaving ample assets to pay the debt, and afterwards, at a distance of time, his remaining property should be lost or squandered as not to have sufficient to pay his debt, and the result is that the property is taken out of the defendant's possession, and the result is that the property is taken out of the defendant's possession.

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NEW ORLEANS.

W. D. LOTT, Madison City, Miss.
C. W. WOOD, Canton, Miss.
Lott, Wood & Co.,
—WHOLESALE—
GROCERS
—AND—
Commission Merchants,
46 Canal and 65 Common Streets,
NEW ORLEANS.

ST. JAMES HOTEL,

W. H. HURD, PROPRIETOR.
THE Proprietors will spare neither labor nor expense to merit a continuance of the liberal patronage with which the St. James has thus far been honored.
Jan 25-ly.

NEW ORLEANS, LA.

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MEMPHIS.

D. M. WISDOM, W. L. DUFF,
ATTORNEYS AND COUNSELLORS AT LAW
No. 10 West Court Street,
MEMPHIS, TENN.

J. D. STILES & CO.

MANUFACTURERS AND WHOLESALE
Retail Dealers in
FURNITURE,
Excelsior, Shuck, Moss, Cotton Top and Spring
Mattresses, Bedding, &c., No. 222 Second St.,
Stillman's Block, Memphis, Tennessee.
April 4, 1867-ly.

NEW AUCTION HOUSE.

418 MAIN STREET—NEAR BEALE.
VAN BROCKLIN & CHILLIS
Will sell at Auction daily and nightly,
(Sundays excepted,) every variety of
Merchandise, such as the community require
and demand. The beauty of our system is
the LOWEST BIDDER TAKES THE PRIZE.
See the attention of Country Merchants
especially invited.

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QUACKENBUSH & WARREN
57 MADISON STREET,
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NEW ORLEANS.

KEET & HOGAN.
IMPORTERS AND DEALERS IN
HARDWARE,
IRON,
NAILS,
TIN PLATES,
COPPER,
YELLOW METAL,
WINDOW GLASS,
ZINC,
Cordage (Manilla and Tarral),
AGRICULTURAL IMPLEMENTS,
TINNERS' TOOLS of all kinds.

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New Orleans Business Cards.

DENTAL DEPT.
A. A. FAYERWEATHER, New Orleans
Dental Dept., 55 St. Charles street, estab-
lished 1855. mh7-ly.

SOUTHERN WHISKY DEPOT.

THO. KLINPETER, No. 13 Front Street,
N. O. Foreign and Domestic Liquors,
Southern Whiskey from \$1.00 to \$2.50 per gal.
April 2-ly.

"PELVIAN BARK BITTERS."

CELEBRATED TONIC;
A Certain Preventive for Fever and Ague
G. L. KOUNS & BRO., 50 Common St., N.
O. Wholesale Agents, Manufactured
by D. M. Port & Co., Wholesale Druggists, 124
Charlottesville, N. O. April 2-ly.

COMMISSION MERCHANTS.

E. F. GOLSON, Alabama. J. Y. SANDERS, La.
GOLSON & SANDERS, 108 Poydras street,
New Orleans. Jan 25-ly.

RENT, THOMAS & CARTER.

POYDRAS STREET.
IMPORTERS OF ALL KINDS OF DEALERS IN
Cordage, Hauling, Rope, Twine, Traces,
Agents for F. W. DEVOE & CO., New York,
Brilliant Oil, &c. sep1-ly

PIANOS AND MUSIC.

ZORN & BREMER, 98 Camp street. Con-
stantly on hand first class Pianos, Pleyel's,
Martins and Overier's, the celebrated Cyclo, &c.
oct. 18, 61 ly

DRUGGISTS.

F. DUONGE, Importer and Dealer in
French, American and English Drugs,
Chemicals, Perfumery, Patent Medicines, Sur-
gical Instruments, Trusses, Brushes, and
Druggists' Sundries, No. 39 Chartres street, es-
tablished in 1829. oct. 18, 61 ly

JEWELRY AND FANCY GOODS.

G. BRUNIG, Artist in hair, and Dealer in
G. Watches and Jewelry, No. 118 Canal St.,
Premium awarded at the late Fair for best
Hair Work. Watches repaired with war-
ranty. A. RIEMANN, Watchmaker,
dec-8-ly

WHOLESALE FISH MERCHANTS.

S. D. MOODY & CO., 87 Thopoulais street.
Special attention given to selling
Mackerel, Cod fish, Herring, Lobster, Clams
and Sardines. Nov 13-ly

SEWING MACHINES.

SOUTHERN FAMILY SEWING MA-
CHINES. The "Sewer" machines of
Willcox & Gibbs, will sew, hem, fold, blind,
tuck, gather, quilt, cord, and embroider, with
satisfaction. Agents, Thopoulais street, No. 6 St.
Charles street—Box 388, New Orleans.
oct-6-ly

FANCY GOODS AND TRIMMINGS.

P. P. PETER, 127 Canal street, Tow, Perfumery,
C. Combs, Brushes, Bureaus, Needles, Pins,
Pencils, Pianos, Dress Trimmings, &c.
Nov 10-ly

R. STURZENEGGER, Importer of and

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F. Goods, No. 118 Canal St.,
Premium awarded at the late Fair for best
Hair Work. Watches repaired with war-
ranty. A. RIEMANN, Watchmaker,
dec-8-ly

SKIRTS AND CORSETS.

R. STURZENEGGER, Importer of and
F. Goods, No. 118 Canal St.,
Premium awarded at the late Fair for best
Hair Work. Watches repaired with war-
ranty. A. RIEMANN, Watchmaker,
dec-8-ly

APRIL WAREHOUSE.

R. STURZENEGGER, Importer of and
F. Goods, No. 118 Canal St.,
Premium awarded at the late Fair for best
Hair Work. Watches repaired with war-
ranty. A. RIEMANN, Watchmaker,
dec-8-ly